EXTRA: Liberal Decision Clears Way for McCarran "Immunity" Bill, Page 2

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But It's Not Just Joe McCarthy

Washington

Buds are beginning to appear on the forsythia, and welts on Joe McCarthy. The early arrival of spring and a series of humiliations for our would-be *Fuehrer* have made this a most pleasant week in the capital.

The events of the week are worth savoring. Blunt Charlie Wilson called McCarthy's charges against the Army "tommy-rot" and for once Joe had no come-back. Next day came the ignominious announcement that he was dropping that $2,000,000 suit against former Senator Benton for calling McCarthy a crook and a liar; the lame excuse promised to launch a nationwide "I Believe Benton" movement. Stevenson followed with a speech calculated to impress those decent conservatives who had grown disgusted with the Eisenhower Administration's cowardice in the Zwicker affair.

When McCarthy sought to answer Stevenson, the Republican National Committee turned up in Ike's corner and grabbed the radio and TV time away from him. Nixon was to reply, and McCarthy was out (unless somebody smuggled him into the program in place of Checkers). While McCarthy fumed and threatened, his own choice for the Federal Communications Commission, Robert E. Lee, ungratefully declared he thought the networks had done enough in making time available to Nixon. Next day a Republican, albeit a liberal Republican, Flanders of Vermont, actually got up on the floor of the Senate and delivered a speech against McCarthy. That same night Ed Murrow telecast a brilliant TV attack on McCarthy.

Under Stevenson's leadership, Eisenhower rallied. At press conference he endorsed the Flanders attack, said he concurred heartily in the decision to have Nixon reply to Stevenson, asserted that he saw no reason why the networks should also give time to McCarthy. Like an escaped prisoner, flexing cramped muscles in freedom, the President also made it clear he had no intention of turning Indo-China into another Korea and even had the temerity to suggest that it might be a good idea to swap butter and other surplus farm commodities with Russia.

The White House conference was no sooner over than Senator Ferguson as chairman of the Senate Republican Policy Committee released a set of suggested rules for Senate investigating committees which are no great shakes at reform but would, if adopted, make it impossible for McCarthy any longer to operate his subcommittee as a one-man show. These may be small enough gains in the fight against McCarthyism, but they were bitter pills for McCarthy to swallow.

Still Silence in the Senate

So far McCarthy's colleagues on both sides of the aisle have been lying low. When Flanders attacked McCarthy, the Senate was as silent as it was some weeks earlier when Ellender of Louisiana made a lone onslaught and Fulbright of Arkansas cast the sole vote against his appropriation. Only Lehman of New York and John Sherman Cooper (R.) of Kentucky rose to congratulate Flanders. Nobody defended McCarthy, but nobody joined in with those helpful interjections which usually mark a Senate speech. When the Democratic caucus met in closed session, the Stevenson speech was ignored. Lyndon Johnson of Texas, the Democratic floor leader, is frightened of McCarthy's Texas backers.

Need One Be Fair With Satan?

Great issues are rarely resolved by frontal assault; for every abolitionist prepared to challenge slavery as a moral wrong, there were dozens of compromising politicians (including Lincoln) who talked as if the real issue were States rights or the criminal jurisdiction of the Federal courts or the right of the people in a new territory to determine their own future. In the fight against the witch-mania in this country and in Europe, there were few enough to defend individual victims but fewer still who were willing to assert publicly that belief in witchcraft was groundless. So today in the fight against "McCarthyism." It is sometimes hard to draw a line of principle between McCarthy and his critics. If there is indeed a monstrous and diabolic conspiracy against world peace and stability, then isn't McCarthy right? If "subversives" are at work like termites here and abroad, are they not likely to be found in the most unlikely places and under the most unlikely disguises? How talk of fair procedure if dealing with a protean and Satanic enemy?

To doubt the power of the devil, to question the existence of witches, is again to read oneself out of respectable society, to brand oneself a heretic, to incur suspicion of being oneself in league with the powers of evil. So all the fighters against McCarthyism are impelled to adopt its premises. This was true even of the Stevenson speech, but was strikingly so of Flanders. The country is in a bad way indeed when as feeble and hysterical a speech is haled as an attack on McCarthyism. Flanders talked of "a crisis in the age long warfare between God and the Devil for the souls of men." He spoke of Italy as "ready to fall into Communist hands," of Britain "nibbling at the drugged bait of trade profits." There are passages of sheer fantasy, like this one: "Let us look to the South. In Latin America there are study strongpoints of freedom. But there are likewise, alas, spreading infections of communism. Whole countries are being taken over . . ." What "whole countries"? And what "sturdy strongpoints of freedom?"

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Justice Black Wins A Victory for The 5th Amendment—

But Clears The Way for McCarran's "Immunity" Bill

THE LAST CONSTITUTIONAL ARGUMENT AGAINST THE McCARRAN IMMUNITY BILL was destroyed last week by the unanimous decision of the U.S. Supreme Court in *Adams v. Maryland.* The argument was that Congress could not compel a witness to give up his privilege against self-incrimination unless it conferred upon him an immunity as broad as the privilege itself. Admittedly Congress could grant immunity from Federal prosecution. But could Congress give a witness immunity from State prosecution? The answer—until last week—was not at all clear. There were decisions which held that Congress could take away the privilege even though the testimony thus elicited might later be used against the witness in the State courts. Last Monday, speaking through Mr. Justice Black, the Court cited Article VI of the Constitution which says laws made in pursuance of it "shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding . . ." For the first time clearly and unanimously the Court held that this clause empowered Congress to confer immunity from State as well as Federal prosecution.

The case involved a gambler convicted in Maryland courts on the basis of testimony he had given Senate crime investigators. The conviction was reversed on the ground that testimony given to a Congressional investigating committee could not (under an 1857 statute) later be used to convict him of crime "in any court," including (the Supreme Court now says) any State court. The decision may help clear the way for passage of S 16, the McCarran immunity bill, which passed the Senate last July (see the *Weekly* of July 18 last for text and a full account) and is now before the House Judiciary Committee.

Few if any newspapers seem to have noticed that Gambler Adams, in appealing to the Supreme Court, cited controversy over S 16 as his final and clinching argument why our highest court should review his conviction. Though the McCarran bill was not mentioned in the decision, Black did say "We granted certiorari because a proper understanding" of the question "is of importance to the national government, to the States, and to witnesses summoned before congressional committees."

ONLY A FEW WEEKS AGO in *Irvine v. California,* Black and Douglas dissenting protested the conviction of a California gambler in the courts of that State on the basis of information disclosed under coercion to the Federal government, despite the Fifth Amendment and California's own "immunity" legislation (see The Case of The California Bookie in the *Weekly* for February 15). The majority dodged the question in that case, declaring it had been raised too late in the proceedings. This time Black won his point, but it may prove a costly victory. Had the right wing of the court gone the other way, they would have raised a serious obstacle to "immunity" legislation.

Even so, a loophole may have been opened by a passage in Justice Jackson's concurring opinion. He said of the ruling, "It does not say Maryland cannot prosecute petitioner . . . she just has to work up her own evidence and cannot use that worked up by Congress. The protection to the witness does not extend beyond the testimony actually received." Though this might not be literally true of a broader Federal statute, the danger is still there. What if an "immunized" witness testified to facts which could have been basis for prosecution in the Federal courts under the Smith Sedition Act—and then Pennsylvania (as in the Steve Nelson case) or Massachusetts (as in the Dirk Struik case) worked up evidence of its own to support prosecution under State sedition laws? Would a majority of the Supreme Court be as ready in that event to defend a radical as it was to rule in favor of a Maryland numbers operator?

IN ADDITION TO THE McCARRAN BILL and its House counterpart (H.R. 6948 by Wilson, D., Texas) there are five other immunity bills before the House Judiciary Committee. The most extreme HJR 11 (by Boggs, D., La.) provides that the director of the FBI or any designated assistant may compel any person to give information and to produce documents but this person may not afterward be prosecuted because of his testimony other than for perjury or contempt. Any person refusing to talk may be haled before a Federal judge. Presumably he could be jailed until he agreed to testify. This measure is unlikely, even in this atmosphere, to get out of committee. Another freak measure (HR 7658 by Hosmer, R., Cal.) would impose a $1,000 fine or a year in jail or both on any witness who invoked his privilege under the Fifth amendment "when he either does not in fact fear or does not have reasonable grounds to fear" self-incrimination. Just how this could be determined without forcing the witness to give up the privilege he was invoking is a mystery.

The real battle will be joined over whether the Attorney General or Congress will decide when immunity is to be granted. HR 2737 (by Norrell, D., Ark.), like the original McCarran bill, would shut the Attorney General out altogether. HR 2829 (by Battle, D., Ala.) would give the Attorney General power to grant immunity and compel testimony in court and grand jury proceedings, but not before Congressional committees. HR 6899 (by Keating, R., N.Y.) would give the Attorney General the same power in Congressional investigations as well. But the Keating bill would also require a majority vote of the House of Congress concerned, or a two-thirds votes of the full investigating committee including two members of the minority party.

THE KEATING BILL HAS THE BEST CHANCE OF BEING REPORTED and of passing the House, but is unlikely to win approval in the Senate. The most McCarran would accept last year was a provision requiring that the Attorney General be notified a week before any witness was granted immunity. If the Attorney General did not assent within a week, immunity could nevertheless be granted on majority vote of the House involved. To go beyond this would be to give Brownell, their rival, a veto power over McCarran and McCarthy. The latter, as we have already reported, is not enthusiastic about any kind of immunity legislation and prefers the easy victories to be won by forcing witnesses to invoke their privilege against self-incrimination, thus adding to his box score of "Fifth Amendment Communists." One way to block passage this year is to demand hearings. It is a scandal that legislation making so fundamental a change in American law should have passed the Senate without hearings of any kind.

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of a European army are planning to set up the German units on a local German geographical basis. "Past experience with the refugee politicians," the *Economist* says "suggests that the right wing have in mind one day to include in the new army not only Bavarian divisions but Silesian and East Prussian." The new German army is being planned for "liberationist" purposes, as was Hitler's. But what if again they strike first at the West, this time outfitted with our own atomic devices? What if the Japanese join them? What traitors, dupes and fools the present architects of American policy will seem to the survivors in our battered cities!

MUST READING—Alan Barth's "How Good Is An FBI Report?" in the March issue of Harper's.

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I. F. Stone's Weekly

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What Traitors, Dupes and Fools . . .

THE STATE DEPARTMENT'S FAR EASTERN POLICY MAKERS ARE APPALLED by Prime Minister Laniel's speech on Indo-China in the Chamber of Deputies last week-end. M. Laniel seems seriously to believe that at Geneva the French can sidetrack Korea for Indo-China and then make a deal with Peiping and Moscow. Ho Chi-minh would be sacrificed in return for recognition of Communist China and the withdrawal of American troops from Korea. The tone of the speech and this "barter arrangement" at which it hinted indicates how uniformed it is possible for one allied government to be about the state of mind existing in another capital. M. Laniel is operating in a completely unreal world. The notion that a colonial revolt with as wide a popular base as Ho's could be snuffed out on signal from the Kremlin is fantastic enough, though not quite as fantastic as the idea that the Eisenhower Administration could possibly enter into a general settlement with Communist China and withdraw from Korea at this time. Arthur Dean destroyed himself politically by suggesting that perhaps we may have to recognize Communist China some day. Dulles is in hot water because he agreed even to sit down with the Chinese Reds at Geneva.

M. LANIEL SEEMS TO BELIEVE THAT FRANCE CAN *AVOID* any real sacrifice or painful adjustment in Indo-China while the U.S. pays the political bill, buying Ho's head on a platter. The fact is that Washington does not want a settlement of the Indo-Chinese war. Washington fears that given peace the combination of nationalists and Communists behind Ho would ultimately take over the government. This belief in the potency of the Communists would make peace, real peace, impossible anywhere. The American right has long thought that the less free the "free world" is, the less danger that it might make the wrong choice. In Indo-China, if France backs out, we will step in, as we stepped in to replace the British in Greece. There is little doubt that the White House is not only opposed to sending troops but wants to get those American technicians out of Indo-China as soon as possible. Nevertheless the chances are that those circles in the Pentagon which believe Indo-China the key to Southeast Asia will yet find a way to intervene.

SLICKEST OF THE NEW AGREEMENTS WITH JAPAN is that "regarding the guaranty of investments." This has been represented as guaranteeing American investments in Japan against expropriation or non-convertibility of currency. An examination of the text as released here by the State Department shows, however, that this agreement merely permits the American government to guarantee American investors against loss and to assume their assets in Japan. Yen amounts so acquired by the U.S. government "shall be accorded treatment not less favorable" than that accorded private American holdings of yen at the time, and such amounts may be used by the American government in Japan—but only "for non-military administrative expenditures"! There is nothing in the agreement which would prevent Japan from expropriating American investments or making their proceeds non-convertible.

THAT LAST "TWENTY YEARS OF TREASON" will pale beside this twenty years of treason as the American government hastens to rearm Germany and Japan. The worst thing we are doing is to destroy in both countries the popular resistance to remilitarization, the first feeling of its kind in many years and the only basis on which world security could have been rebuilt. As Walter S. Robertson, Assistant Secretary of State for Far Eastern Affairs, said in an extraordinarily fatuous speech at Cleveland last February 6, "Some Japanese—as well as some others in the Far East—are opposed to Japanese rearmament because they fear it would mean a recrudescence of the military caste in Japan. I believe they are too much influenced by the past . . . The Japanese people are now possessed of the means required to prevent the accumulation of power in the hands of a military caste. They have free elections . . . they have a free press," etc. That free press is busily fighting a rearguard action against a legislative tide that is carrying Japan back to police state methods and monopoly; we will intensify the tide by giving the military arms "for internal security" and by provisions in the new agreements which require a tightening of "security" regulations in Japan. These have a sinister history in that country.

IN GERMANY, AS IN JAPAN, THERE IS FEAR OF REARMING. In a dispatch to the *Baltimore Sun* from Bonn last Monday, Paul W. Ward reported astutely that "even more than the French fear the Germans, the Germans fear themselves . . . They have no confidence in the ability of either themselves or their compatriots to hold the military in check by democratic process." England prepares to go along with German rearmament but not out of conviction. It is not surprising to read the warnings of G. D. H. Cole in last week's *New Statesman and Nation* but it is surprising to find forebodings in the pages of the London *Economist*, which has been a supporter of American policy. *The Economist* says that while the German people are either passive or antagonistic and the German business community unenthusiastic about rearmament "in the background of Dr. Adenauer's right wing coalition partners are generals who believe that the Nazi New European Order and the Viking Division of the Waffen SS were the models for the anti-Communist Europe of tomorrow." It is disturbing to see that the German military while paying lip service to the idea

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(With Apologies to Maimonides) Our Own Guide to the Perplexed

Do you often wonder how the deadly barrage of stereotypes on press, radio and TV could be combatted? How news and information of the kind available in this Weekly could reach a wider audience and thus be made more effective? Why not place it in the hands of your Congressman, your Minister, your local editor? Give any one or all of them a gift subscription at our special rate of $4 a year, and help bring the fresh air of dissent and independent reporting into the inner councils of your community. (Another idea is to subscribe for your local library.) Why not turn the page and send such a gift subscription today? Can you think of an easier and less expensive way to influence a speech, a sermon or an editorial?

—I. F. Stone

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How Stem Witch Mania While Acquiescing in Demonology?

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Flanders pictured the Iron Curtain drawn tight about the U.S. and Canada, the rest of the world captured "by infiltration and subversion." Flanders told the Senate, "We will be left with no place to trade and no place to go except as we are permitted to trade and to go by the Communist masters of the world."

The center of gravity in American politics has been pushed so far right that such childish nightmares are welcomed as the expression of liberal statesmanship. Nixon becomes a middle-of-the-road spokesman and conservative papers like the Washington *Star* and New York *Times* find themselves classified more and more as parts of the "left wing press." In this atmosphere the Senate Republican reply to McCarthy's silly "Communist coddling" charges against the Army is to launch a formal investigation of their own through Saltonstall and the Armed Services Committee. This will be the Republican and Army analogue of the Tydings inquiry into the charges against the State Department and will be greeted with the same cry of whitewash by the growing lunatic fringe behind McCarthy.

Pandering to Paranoia

There are some charges which must be laughed off or brushed off. They cannot be disproved. If a man charges that he saw Eisenhower riding a broomstick over the White House, he will never be convinced to the contrary by sworn evidence that the President was in bed reading a Western at the time. Formal investigations like Saltonstall's merely pander to paranoia and reward demagogy. What if McCarthy were next to attack the President and the Supreme Court? Are they, too, to be investigated? Is America to become a country in which any adventurer flanked by two ex-Communist screwballs will put any institution on the defensive?

McCarthy is personally discomfitted, but McCarthyism is still on the march. Acheson fought McCarthy, but preached a more literate variation of the Bogeyman Theory of History. Eisenhower fights McCarthy, but his Secretary of State in Caracas is pushing hard for a resolution which would spread McCarthyism throughout the hemisphere, pledging joint action for "security" and against "subversion." Nowhere in American politics is there evidence of any important figure (even Stevenson) prepared to talk in sober, mature and realistic terms of the real problems which arise in a real world where national rivalries, mass aspirations and ideas clash as naturally as the waves of the sea. The premises of free society and of liberalism find no one to voice them, yet McCarthyism will not be ended until someone has the nerve to make this kind of a fundamental attack upon it.

What are the fundamentals which need to be recognized? The first is that there can be no firm foundation for freedom in this country unless there is real peace. There can be no real peace without a readiness for live-and-let-live, i.e. for co-existence with communism. The fear cannot be extirpated without faith in man and freedom. The world is going "socialist" in one form or another everywhere; communism is merely the extreme form this movement takes when and where blind and backward rulers seek by terror and force to hold back the tide, as the Czar did and as Chiang Kai-shek did.

The Need for "Subversion"

There must be renewed recognition that societies are kept stable and healthy by reform, not by thought police; this means that there must be free play for so-called "subversive" ideas—every idea "subverts" the old to make way for the new. To shut off "subversion" is to shut off peaceful progress and to invite revolution and war. American society has been healthy in the past because there has been a constant renovating "subversion" of this kind. Had we operated on the Bogeyman Theory of History, America would have destroyed itself long ago. It will destroy itself now unless and until a few men of stature have the nerve to speak again the traditional language of free society. The business of saying, "Of course there are witches and their power is dreadfully pervasive and they are all around us, but we must treat suspects fairly . . ." is not good enough. To acquiesce in the delusions which create a panic is no way to stem it.

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